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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 20th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 17 August 1993, at 10 a.m.

Chairman: Mr. YIMER

later: Mr. AL-KHASAWNEH

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The meeting was called to order at 10.20 a.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT;

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES;

(d) THE RIGHT TO A FAIR TRIAL

(agenda item 10) (continued) (E/CN.4/Sub.2/1993/19-21, 23-24 and Add.1-2; E/CN.4/Sub.2/1993/NGO.2, 9, 14-15)

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (continued) (E/CN.4/Sub.2/1993/25; E/CN.4/Sub.2/1993/NGO.15)

1. Mr. MORLAND (Observer for the United Kingdom) said that the United Kingdom Government wished to respond to the criticisms made by the International Federation of Human Rights in its written statement to the Sub-Commission (E/CN.4/Sub.2/1993/NGO/15). It wished to make clear that it did not accept those criticisms. The real abusers of human rights in Northern Ireland were the terrorists, from whatever side of the community they came.

2. The IFHR seemed to have misunderstood Lord Diplock's ruling regarding lethal force. The law in Northern Ireland, as in the rest of the United Kingdom, provided that "any person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders".

3. The police and army were issued with specific instructions on opening fire, designed to keep them wholly within the law, and it was made clear, in particular, that firearms should only be used as a last resort.

4. Members of the security forces were subject to the same law as everyone else. The Government treated any allegations of misconduct by the security forces with the utmost seriousness. Actions or activities which fell below the high standards set by the security forces could not be and were not tolerated.

5. The report by John Stevens into allegations of collusion between the security forces and paramilitaries found that although there had been some instances of collusion, it had not been widespread or institutionalized. The recommendations made by Deputy Chief Constable Stevens had been acted upon and remedial action taken.

6. Naturally, consideration was being given to the implications of the Nelson case. Nobody underestimated the seriousness of what had occurred. Any lessons would be learned and applied.

7. There never had been and never would be a shoot-to-kill policy by the security forces in Northern Ireland. The only shoot-to-kill policy was that of the terrorists. All issues which related to the use of force in Northern Ireland were kept under review and the subject would continue to receive close scrutiny.

8. Following any shooting involving the security forces, a thorough police investigation was carried out and the result was passed on to the Independent Director of Public Prosecutions in Northern Ireland who might call for further investigations to be carried out, before deciding whether a prosecution should be brought against those involved.

9. Proper mechanisms existed for the investigation of complaints against the police. The Independent Commission for Police Complaints was charged with ensuring that the investigation of complaints was carried out in a thorough and impartial manner. The Commission was required to supervise the investigation of all complaints involving death or serious injury and had the power to supervise, at its discretion, the formal investigation of any other complaint, and had the power, in any case which it supervised, to control both the conduct and the scope of the investigation.

10. The use of plastic baton rounds by the security forces in Northern Ireland would not be discontinued until an equally effective and safer method of controlling riot situations could be found. To do so would be both irresponsible and dangerous, as it would force the security forces to revert to either less effective measures, for example, water cannon or CS smoke, or more lethal means, such as the use of live rounds.

11. Use of plastic baton rounds was carefully controlled, and every effort was made to minimize the risk to uninvolved persons. However, any system for dealing with violent street disorder would carry with it some element of risk. It was unfair to judge such a system without taking into account the circumstances prevailing at the time.

12. The European Court in the case of Brannigan and McBride, quoted in the submission of the International Federation of Human Rights, in which the applicants had challenged the United Kingdom Government's right to derogate from its obligations under article 5 (3) of the European Convention, had held that: "Having regard to the nature of the terrorist threat in Northern Ireland, the limited scope of the derogation and the reasons advanced in support of it, as well as the existence of the basic safeguards against abuse, the court takes the view that the Government have not exceeded their margin of appreciation in considering that the derogation was strictly required by the exigencies of the situation." The decision of the court confirmed the Government's view that the power to detain persons suspected of involvement in the Commission, preparation or instigation of terrorism for periods of up to seven days was strictly required by the situation in Northern Ireland. Although the derogation was kept under review, in the light

of the continuing level of terrorist threat, and the Government's duty to protect its citizens from that, it was regarded as necessary under the circumstances.

13. The Government recognized that the statutory rights of access to legal advice for those in police custody should not be delayed unnecessarily, but believed that in certain circumstances delay was necessary to prevent possible interference with police investigations into offences, especially terrorist offences. The Emergency Provisions legislation set out detailed safeguards on specific grounds which had to be present before any delay could be authorized.

14. The Government accepted that the arguments for and against the audio or video-taping of interviews remained finely balanced. However, after careful consideration, it remained the view of the Government that the recording of interviews would not be appropriate. It seemed clear that in the circumstances which existed in Northern Ireland suspects would be less prepared to offer vital information to the police if they believed that a permanent record was being made of their cooperation.

15. Those fears were not imaginary: nine people had been murdered in Northern Ireland in 1992 by loyalist and republican terrorists as alleged informers.

16. The Criminal Evidence (Northern Ireland) Order 1988 was not intended to abolish the right to silence, but to amend it in such a way that improper advantage could not be obtained by failing to disclose information in certain clearly defined circumstances. It neither affected the presumption of innocence, nor lowered the burden of proof, and remaining silent was not an offence under it. It permitted a court to draw inferences from silence in certain cases (although they were not obliged to do so, and in a number of important cases had refrained from doing so) but did not permit the accused to be convicted on the basis of those inferences alone. It did, however, seek to thwart the orchestrated refusal of members of terrorist organizations to answer any substantive questions while in police custody.

17. Under the Emergency Provisions Act, confessions were inadmissible if they had been obtained by questionable means. Section 11 (3) of that Act provided the judge with a wide discretion to exclude any confession if he considered it inappropriate to do so in the interests of justice.

18. With regard to the statement of the International Commission of Jurists at the 18th meeting in so far as it related to Northern Ireland, allegations that some lawyers who represented terrorist suspects might be subjected to harassment by the police were extremely serious, and were treated as such by the Government. As yet, no factual information had been presented to substantiate those allegations.

19. Clearly, if any organization was in possession of information which was relevant, it should be handed over to the police immediately for investigation.

20. The International Commission of Jurists had also referred to the murder of Patrick Finucane. No one had so far been charged with his murder,

although the police inquiry had led to three persons being charged with terrorist-related offences. The police inquiry was continuing.

21. Mr. SEZGIN (Observer for Turkey) said that he wished to reply to the allegations made by three NGOs.

22. Firstly, without wishing to discredit the International Commission of Jurists, it should be pointed out that the paragraph on Turkey in its statement under agenda item 11 contained approximations and untruths. The organization it mentioned, the People's Legal Aid Bureau was not known to his delegation. Contrary to what the ICJ had stated, the persons in question had not been tried on the grounds of their membership of such an organization. The ICJ could at least have mentioned the charges levelled against the lawyers, since the transparency of the legal system in Turkey had enabled it to follow the trial without detecting any irregularities in the proceedings.

23. Furthermore, it should be pointed out that each Bar Association in Turkey had a legal aid bureau which was at the disposal of detainees.

24. In addition, it should be recalled that since 1987, Turkey had recognized the right of private individuals to appeal to the European Commission of Human Rights against any act or omission on the part of public authorities and, of course, that right extended to lawyers who were well aware of the procedures for lodging an appeal. The ICJ should have been reassured by the availability of such a procedure.

25. The allegation that the Working Group on Arbitrary Detention had considered the detention of several lawyers in Turkey to be arbitrary was also untrue. According to the report by the Working Group which his delegation had received, and according to current information, there was only one case which could be considered as one of arbitrary detention and that was probably due to a lack of information.

26. There was also an omission in the statement made by the ICJ. A new Code of Criminal Procedure which extended the recognized competence of lawyers had entered into force in Turkey in December 1992. The ICJ should have shown its sincerity by mentioning that far-reaching reform. The ICJ had not done so, and instead had stated that lawyers affiliated to the Turkish Human Rights Association were "targeted". The Association did not work in the field of human rights at all; it was closely linked with the PKK terrorist group which was involved in drug trafficking and which had claimed thousands of victims among the civilian population including women, children, babies and the elderly.

27. His delegation, had repeatedly spoken out in various international forums against the conscious or unconscious support extended by certain international NGOs to terrorism. The ICJ and other NGOs should be more careful, less biased or hasty in discharging their mission of protecting human rights and seeking the truth.

28. His delegation also wished to draw attention to the statement made by International P.E.N. at the 19th meeting. Firstly, no detainees in Turkey were held for crimes of opinion. Secondly, a person did not become a writer

or a journalist simply by claiming to be one. The persons mentioned by International P.E.N., in the statement made under agenda item 10, were instigators of ethnic terrorism. Authors of pamphlets and documents which aimed to instigate terrorism could not enjoy the status of writer or journalist.

29. Furthermore, International P.E.N. had submitted information which was out of date. The provisions of the Law to Fight Terrorism (Decree No. 3713), including article 8, had been rescinded or amended. International P.E.N. should therefore try to ensure that its sources were up-to-date.

30. Allegations had also been made by a NGO concerned with educational development which had launched into speculations with regard to geopolitics and humanitarian law. In that regard, he wished to recall the United Nations rules concerning the designation of geographical localities on the territory of member States.

31. Contrary to what had been stated by that NGO, Turkey was not in a war situation. However, it was a fact that its security forces were engaged in combating the bloodthirsty terrorism of the PKK. It would have been more appropriate if the NGO in question had considered the case of the dozens of teachers who had been murdered and the schools razed to the ground and destroyed in south-east Anatolia by the PKK, instead of identifying itself with that terrorist organization whose members included some of the world's major drug traffickers.

32. Ms. MARTENSEN (International Movement Against all forms of Discrimination and Racism), speaking on agenda items 10 and 11, said that IMADR welcomed the report prepared by Mr. Chernichenko and Mr. Treat on the right to a fair trial (E/CN.4/Sub.2/1993/24 and Add.1-2).

33. In Tibet, peaceful demonstrators had been repeatedly arrested, interrogated and tortured for expressing views contrary to China's official position on Tibet. IMADR supported the request made by several NGOs that the Government of China should allow access to fact-finding missions to investigate human rights violations in that area, including the rights of detainees.

34. The African American minority in the United States of America was also a victim of a biased criminal justice system. The death of Supreme Court Justice Thurgood Marshall and the questionable impartiality of the jury and the judiciary in the Rodney King trial had triggered a long-overdue reassessment of the treatment and representation of African Americans within the justice system. The New York State Judiciary Commission's well-publicized conclusion that there were two justice systems at work in the courts of New York, one for the whites and a very different one for minorities and the poor was unfortunately applicable to the entire country. African Americans received higher bails, harsher sentences and inadequate legal services. In addition, they were grossly underrepresented in the legal profession and in the courts.

35. At the beginning of 1993, hundreds of thousands of Ogoni people in Nigeria had begun peaceful protests against Shell Oil's encroachments on their land and resources. Many had been arrested and detained with no official charge. Mr. Ken Saro-Wiwa had been arrested repeatedly since April 1993

without being charged and in the absence of valid arrest warrants. Following his arrest in June 1993, the charge of unlawful assembly and seditious publication had finally been delivered, but only after three weeks ofdetention. While imprisoned, he had been denied access to a lawyer, food and necessary medical treatment. As a result, he had suffered two heart attacks and had been transferred to an intensive care unit. In May 1993, the Government of Nigeria had passed the Treason Offences Decree 1993 which rendered the utterance of "ethnic autonomy" punishable by death. IMADR supported the request by many observers that the Government of Nigeria should repeal the law which directly discriminated against the Ogoni people.

36. Minorities in southern Iraq had also been subjected to unwarranted arrests and abuse in detention. As had been reported in the international press on 23 July 1993, the Government of Iraq had engaged in repeated attacks against the inhabitants of the southern regions, as part of an extensive government project to drain the areas's marshlands. IMADR considered such practices to be a violation of Security Council resolution 688 (1991) which called for an end to Iraq's repression of civilians.

37. Since 1988, the issue of Japan's "substitute prisons" (Daiyo Kangoku) had been raised periodically in the Sub-Commission and the Commission on Human Rights. In Japan, almost all cases involving serious offences were processed in substitute prisons. While detained, suspects were often kept in isolation and had little, if any, access to a lawyer. They endured long periods of interrogation, sometimes up to 20 hours and were often beaten. The groups most victimized by Daiyo Kangoku were people with disabilities, the Ainu (Japan's indigenous people), Koreans and other minorities. The Sayama case was one example of the misuse of substitute prisons as a vehicle for discrimination. In that case, a member of the Buraku minority had been arrested and placed in a substitute prison where he had been maltreated and tricked into signing a confession. In 1977 he had been sentenced to life imprisonment. His lawyers had made several appeals for a retrial, yet neither the Tokyo High Court nor the Supreme Court had agreed to grant one. In addition, neither court had taken into account the new evidence discovered since the initial arrest. A further request for a retrial had been filed in May 1993, the decision for which could be made at any time. International pressure would be instrumental in influencing the outcome of the Sayama case.

38. To prevent potential regression within Japan's justice system and to address the question of substitute prisons, IMADR suggested that the Government of Japan should request the Advisory Council on Legal Systems to mandate a consultative body of scholars and lawyers to formulate a proposal for legal amendments to present detention and penal procedures. All laws relating to the administration of justice were in need of review. As the system stood, it was entirely incompatible with the standards of international human rights law.

39. Mr. LIOTOHE (International Movement against all forms of Racism and Discrimination) said that he wished to speak of the human rights violations of detainees in Aceh, in northern Sumatra and on the island of Yamdena, in the south-east Moluccas.

40. According to international and Indonesian NGOs, thousands of people had been arrested and executed extrajudicially in Aceh since the beginning of the armed repression in 1989. In 1992, Amnesty International had reported that two prisoners of conscience, police sergeants Mr. Yacob and Mr. Idris Ahmed had been sentenced to 11 years' imprisonment for copying and distributing "a legal pamphlet on religious issues". Many other people had been arrested and later "disappeared" for expressing their religious or political beliefs. Mr. Mohamad Jafar Abdurrahman Ed had been arrested in August 1990 in north Aceh on suspicion of aiding an independence group. The military had later denied holding him in custody and had refused to release any information about his fate. The territorial military commander of Aceh had himself stated that the army had killed 15,000 people. As with most "official" statistics, the figure should be multiplied by three, if not five, for a more realistic assessment of the number of murders. The statement by the military commander was not surprising given that he had also been quoted as saying, "if you see an Acehnese rebel, kill him. There is no need for investigating".

41. In Yamdena, 39 people had been detained and tortured at Saumlaki and Tual after participating in a protest against a government-supported project by a logging company to clear the forest, the islanders' sacred land and sole source of life. Some of the detainees had been stripped and forced to sleep on th floor, others had been beaten unconscious with the butts of machine guns, whilst others had had their necks broken. During the protest itself, military and police squads in Batu Putih and Sifnana had fired at the crowd of 400 people, wounding and killing many of them.

42. Those two situations were not isolated cases of police repression but were representative of the human rights violations against detainees throughout Indonesia.

43. Mr. FERTIG (International Educational Development, Inc.), speaking on agenda item 11, said that his organization wished to bring to the attention of the Sub-Commission information on practices weakening the independence of the judiciary and the protection of lawyers.

44. In 16 of the previous 20 years, federal judicial appointments in the United States of America appeared to have been made purely on ideological grounds, resulting in a criminal justice system which undermined procedural protections and contributed to clearly racist policies. Compounding the problem, federal judges had limited discretion in sentencing because Congress had mandated the use of guidelines which were then used to foster political interests. Petty street crimes were harshly punished, while bankers who misappropriated vast amounts of public funds received suspended or light sentences.

45. In the United States of America, judges were overwhelmingly white males. Federal prisons were largely filled with minority group members and poor whites. In fact the United States now had a higher proportion of its minority population in prison than any other industrialized nation. White persons received a far higher percentage of suspended sentences and white-collar crimes went unprosecuted.

46. Judicial bias had recently been illustrated by the inordinately light sentencing of Officers Koon and Powell, the white policemen whose merciless beating of Rodney King was documented on videotape in Los Angeles. After a State court had acquitted the officers in 1992, a federal jury had found them guilty of aggravated assault and use of a deadly weapon upon King. Under the sentencing guidelines, Judge Davies had been required to impose a 70 to 82 months' sentence. However he had departed from those guidelines and shown further bias by declining to set a fine or require restitution.

47. Judge Davies was typical of some 87 per cent of the Federal judiciary in the United States who used the federal sentencing guidelines selectively. While on the one hand they complained of the lack of independence, they willingly departed from established guidelines when police malfeasance was at issue. There were currently 126 openings for the appointment of federal judges in the United States. IED urged the Sub-Commission to encourage the new Administration to use that opportunity to help restore an independent judiciary.

48. The situation in Western Sahara and the imposition of Moroccan judicial power on the Saharans also illustrated serious problems with the independence of justice. Moroccan policy regarding the Sahara contravened various United Nations resolutions and included the seizure of many Saharan citizens. Those persons, who should not be subject to Moroccan authority at all, must defend themselves in a judicial system which denied recognition of their rights and their nationality. Moroccan lawyers were too intimidated to defend them; some of the few lawyers prepared to do so had been jailed themselves.

49. In Turkish-occupied Kurdistan and throughout Turkey, Kurds who sought the right of self-expression were arbitrarily arrested, detained and denied a right to counsel. Under the Turkish penal code, persons could only be held for 24 hours without charge but in the case of political crimes that period was extended to 15 days. In Kurdistan detainees could be held for up to 30 days without charge and many Kurdish political prisoners were incarcerated for far longer periods.

50. Although everyone had a right to counsel, lawyers were routinely threatened to prevent them from representing Kurds. Attorneys defending Kurdish causes were tortured to reveal information protected by lawyer-client privilege. Some had been killed. The chairperson of the Human Rights Association of Elazig, Metan Can, a lawyer who represented members of the Kurdish Workers' Party, had been abducted and his dead body was found a week later. Other lawyers had disappeared and 15 journalists from Turkish/Kurdish newspapers had been killed.

51. Only State security courts dominated by the army and lacking independent status heard political cases, in violation of the Montreal Declaration on the Independence of Justice. Most judges were army officers, reviewing the conduct of civilians engaged in political expression. Defendants had been tortured and forced to make false confessions. If they were fortunate enough to secure a lawyer, the lawyer was often so intimidated and compromised that it was impossible to provide the defendant with a fair defence.

52. IED urged the Sub-Commission to continue its review of agenda item 11. Each of the examples cited above struck at the core of the concept of the independence of the judiciary and protection of lawyers.

53. Mr. SOTTAS (World Organization against Torture) said that by considering agenda items 10 and 11 together the Sub-Commission had acknowledged that the fundamental rights of detainees were more at risk when a weak and dependent judiciary proved itself incapable of protecting those rights. That was particularly true for cases of torture and summary executions committed by agents of the authorities. Events had proved that there was a clear link of causality between excesses committed in a country and the weakness of the judiciary in that country. In addition, ideological, political, cultural, social and economic factors also played a part in the deterioration of the human rights of detainees.

54. There were various situations which were conducive to violations of the rights of detainees. In some countries the Judiciary was not really independent of the Executive. Judges directly appointed by the executive branch could only act under its control and it therefore became impossible to make decisions going against the executive. In States where the Executive did not have such far-reaching powers the Judiciary was none the less subject to control since appointments and promotions were made by the political authorities.

55. In certain countries most of the serious crimes committed by State agents were removed from the competence of ordinary civil courts and heard by ad hoc tribunals or sometimes military courts, where the sense of esprit de corps took precedence over justice.

56. Some countries had special rules of procedure for cases involving members of the security forces or the armed forces. Such procedures allowed pressure to be put on ordinary civil courts since witnesses and the accused could be authorized not to reply to the court's summons for reasons of national security.

57. Terrorist groups belonging to the opposition and those supporting the authorities did not hesitate to threaten openly or even kill judges and prosecutors. Pressure could be exerted also by civil society, by ideological groups or religious authorities so that cases might be decided in accordance with their opinions, even when they contradicted the general principles of law. Some judges even when not under such pressure interpreted the law or even violated it on the basis of their personal ideological or religious beliefs. That kind of behaviour could be particularly harmful in systems where there was no possibility of recourse. As for the right of recourse, in some countries there was no legal channel open to a convicted person or a dismissed complainant, particularly when the accusation had been made against a State official, to apply to an independent higher body. Even in those countries where that was such a possibility, the poorest individuals, who were often the most heavily sentenced, were frequently obliged for financial reasons to abandon further proceedings.

58. The violations of the rights of detainees were not always a result of a deficient judicial system. Sometimes the economic situation of the State meant that prison conditions violated the fundamental rights of detainees. In many countries the infrastructure needed for a prison population was not in place and the resultant over-population affected the physical and mental health of prisoners. The medical, hygiene and food services provided for

prisoners were seriously inadequate. The forces of order, in general, and the staff in charge of prisoners, in particular, were often short-staffed and had not received appropriate training. Detainees were thus treated in a way that was inadmissible and abuses were rarely punished by the judicial authorities. The current trend of privatizing detention centres seemed to pose a real risk that the conditions of detention would deteriorate, particularly in developing countries.

59. For several months the World Organization against Torture had been receiving regular reports of large-scale arrests in Sudan. Many of those arrested, including trade unionists, members of the opposition, members of the armed forces and senior State officials had been tortured. Despite his organization's interventions and those of international organizations, most of the violations reported to the authorities had gone unpunished and the fate of many victims was unknown.

60. His organization had recorded the arrest of many members of human rights organizations, including several lawyers, in Syria. Although there had become some releases in 1992, Mr. Shakour Tabban, a lawyer, had died in November 1992 apparently from the effects of torture. Recent information indicated that several detainees were in a critical state of health following torture and ill-treatment.

61. In Morocco, Mrs. Zoulikha Al Akhdari, a member of the Moroccan Human Rights Association and the wife of a prisoner of conscience, had been arrested in May 1993 for speaking out about the conditions in which political prisoners were held. She was accused of lèse-majesté. As far as was known, the courts had not deemed it necessary to make any inquiries into the charges made by Mrs. Al Akhdari even though they contained information on serious human rights violations carried out in several detention centres in Morocco over a number of years.

62. After the presidential elections in June 1993 in Nigeria had been annulled, demonstrations had been severely repressed and according to various sources of information numerous individuals killed and others wounded. Political leaders had also been detained, some of them being held in secret and denied necessary medical care.

63. His organization had received information on several occasions concerning serious acts of violence against the civilian population of Chad. At the beginning of 1993 the military had carried out a particularly violent repressive operation against the civilian population and it appeared that more than 30 persons had been killed and dozens of others wounded. A very high number of arrests had taken place on 8 and 10 August 1993. On 8 August alone around 220 persons had been arrested including 30 children aged between 14 and 17 years. The circumstances of the arrests raised great concern as to the fate of the detainees.

64. Almost every week information was received about arbitrary arrests, summary executions and torture in Haiti perpetrated by the services of the de facto regime in that country. The anti-gang police department was regularly accused of arbitrary arrest, ill-treatment and torture, but despite the seriousness of its alleged behaviour as far as was known no court had ordered an investigation into its practices or punished the alleged perpetrators in any way.

65. In Columbia a great many death threats, summary executions and enforced disappearances were regularly reported. In some cases the alleged perpetrators had even been identified. Nevertheless, most of the crimes remained unpunished and proceedings instituted by ordinary courts hardly ever reached a conclusion. Faced with a policy of impunity, several human rights organizations, including the World Organization against Torture, had decided to publish in February 1993 a black book collating information on some 350 army and police officers accused of serious human rights violations between 1977 and 1991. Of the 350 officers accused, often by the Colombian judicial authorities, only about 10 had been dismissed from their posts. Since the publication of the book the State prosecutor had decided to reopen some cases and the security forces had responded by characterizing the defenders of human rights as guerilla agents. Particularly serious threats had been made by officers of the Nueva Granada Battalion in Barrancabermeja to leaders of human rights organizations investigating cases of arbitrary detention and torture. Furthermore, a list of 150 leaders of human rights organizations, trade unions and popular organizations had been drawn up by the State security services and handed to a national television channel in July 1993 claiming that the persons named in the list were collaborators or members of the guerilla forces. The case of Colombia showed the extremes to which the paralysis of the judicial system could lead.

66. Numerous cases of summary execution in Guatemala had been reported to his organization since the beginning of 1993. On 25 May 1993, the President of Guatemala had ordered the dissolution of the Congress of the Republic, the Supreme Court of Justice and had suspended the Attorney-General of the Nation and the Attorney for Human Rights. Going against the advice of the Constitutional Council which considered the measures illegal, on 26 May 1993 the President and the Minister of the Interior had decreed the suspension of several articles of the Constitution relating to freedoms and fundamental rights.

67. Although the tension which led to conflicts between a section of the Hindu community and some Muslims seemed to be declining in India, many cases of police violence against the minorities of the country, particularly against Sikhs, in Punjab and the population of Kashmir had been reported in recent months. In July 1993 a report had been submitted by Indian organizations to the Special Rapporteur on torture concerning the situation of minority communities in India. Among the cases mentioned was that of Judge Agit Singh Bains who had been arrested in April 1992 and treated in an unacceptable way.

68. In China, in addition to the particularly tragic situation in Tibet, it should be noted that during the first half of 1993 many cases of arbitrary arrest, torture and ill-treatment were reported throughout the country. Even though Chinese law prohibited torture it was rare for investigations to be carried out on the basis of denunciations from victims or international human rights organizations. The perpetrators of the violence were hardly ever punished and a growing number of cases of torture were reported. At the end of March 1993 a young man belonging to a group of Christians died following ill-treatment at the hands of the police. In a report published in June 1993, Human Rights in China stated that torture was a method widely used to extract confessions from detainees. The same report described the ill-treatment involved in so-called "re-education through labour" programmes for political

opponents. According to the report, "re-educated" prisoners were regularly abused by their "educators" as a result of which several had died.

69. Mr. RODRIGUEZ MEJIA (Andean Commission of Jurists), speaking on items 10 and 11, said that the Colombian section of the Andean Commission of Jurists wished to indicate its concern at the persistence of unlawful arrests in Colombia.

70. In the context of the counterinsurgency campaign, the civilian population in the areas of armed conflict, civic and popular leaders, human rights defenders and activists of opposition political groups continued to be subjected to unlawful detention by the police and armed forces. The situation had deteriorated following a decree issued under the 1992 state of internal disturbances which empowered the armed forces to investigate civilians, as a result of which they had speeded up preliminary proceedings, raiding houses, intercepting communications and using evidence thus obtained in criminal trials presided over by faceless public order judges.

71. Criminal legislation authorized the identity of witnesses to be concealed; as a result masked individuals identified alleged guerrillas in exchange for a financial reward. In many cases such testimony had been used to imprison people who were not involved in unlawful activities. That had happened in the town of Sabana de Torres where 11 popular leaders, including town councillors, had been detained in October 1992 and charged with terrorist activities on the basis of identification by a soldier. Likewise, the peasant leader Guillermo Montero had been kept in prison in Barranquilla, having been accused by the armed forces of terrorist acts. In both cases there was a trial based on secret information provided by informers whose identity had been concealed by the authorities. Charges made by informers could hardly ever be corroborated, and when they were, their shaky basis was revealed. For instance, Alberto Jubiz Hazbum had been detained on suspicion of murdering a presidential candidate but released after three years when the contradictions and inconsistencies of anonymous witnesses had become obvious.

72. The authorities had continued the practice of carrying out illegal raids for the purpose of arresting terrorists and drug traffickers. Innocent persons had been victims of such practices, for instance, the human rights defender Orlando Zapata whose relatives claimed that when members of the armed forces had raided his house some of them had planted explosives there. That had led to Mr. Zapata's conviction for terrorism. Prolonged detentions were current since no time-limit had been set for conducting investigations, which meant that they were delayed indefinitely and that persons awaiting trial, most of them in detention, did not have any legal guarantee of knowing when their case would be resolved; that, in practice, turned their detention into a form of advance sentence. That was the case of 41 persons detained on 10 February 1993 in Chigorodó, currently in prison in Medellín, accused by anonymous witnesses of terrorism, drugs trafficking and robbery.

73. The report of the Special Rapporteur on the question of human rights and states of emergency (E/CN.4/1993/23) had been studied carefully by his organization. The misuse of emergency legislation in Colombia had continued following the promulgation of the new Constitution. Since July 1991 a state of social emergency had been declared once and on two occasions a state of internal disturbance had been declared, the most recent of which had been in force from November 1992 until the end of July 1993. In his account of states

of emergency in Colombia in the report, the Special Rapporteur had stated that he would give more details regarding the emergency measures taken and their impact on human rights in his next report. In the meantime, his organization would like to describe some of the measures operative in the state of emergency and mention some matters which should be looked at by the Special Rapporteur.

74. Using its emergency powers, the Government had restricted the operation of habeas corpus, granted police powers to units set up within the armed forces and established prior controls over information published by the media. It had submitted a draft law to Congress to convert all decrees issued in respect of emergency powers into permanent legislation.

75. Those provisions reinforced the imperium of the emergency legislation, since most of the decrees issued during the state of siege between 1985 and 1991 were still in force in 1993. Those decrees had criminalized social protest, increased sentences by about 200 per cent and restricted judicial guarantees. They had also created the special public order courts which allowed for faceless judges and secret evidence.

76. The situation would deteriorate in the future since Congress had approved a statutory law on states of emergency which was markedly authoritarian since it authorized the security services to make arrests and carry out raids without a court order. It also gave the Government the power to issue decrees with measures to censor the media and deny foreigners the exercise of civil rights. It also gave the Executive the power to increase sentences and modify criminal proceedings, and institutionalized the granting of police powers to the military forces.

77. The recurrent use of emergency powers continued to be one of the main causes of the disintegration of the state of law and violation of human rights in Colombia. It not only contravened the Constitution but also international principles applicable in that context in that they established that there should be a proportionality between the seriousness of the situation and the measures taken to counter it and undermined its exceptional and transitory nature, as outlined in paragraph 47 of the report.

78. In May 1993 over 100 human rights NGOs from Latin America and the Caribbean met in Quito and adopted a declaration which was submitted to the World Conference on Human Rights. The Declaration requested the extension of the mandate and resources available to the Special Rapporteur on states of emergency to enable him to monitor the protection of human rights in such situations, receive complaints, transmit them to the appropriate Government, use his good offices and submit reports to the Commission on Human Rights.

79. In recent years Colombian society had been affected by many forms of violence and in order to counter that trend the Government had adopted many measures relating to the administration of justice, consisting mostly of the suspension or restriction of guarantees. The measures differed significantly from those proposed by Mr. Chernichenko and Mr. Treat in document E/CN.4/Sub.2/1993/24/Add.1 as provisions applicable to all adjudicative proceedings.

80. In fact in order to combat drug trafficking and political violence criminal legislation had been adopted which disregarded the fundamental principles governing any state based on the rule of law. The legislation on terrorism was characterized by its violation of the principle of legality, leaving the definition of a crime up to the judge's subjective interpretation and criminalizing social protest. Under the state of internal disturbance the Government had increased the punishment for those crimes.

81. Persons charged with drug trafficking and terrorism were subjected to emergency courts and procedures established by the temporary norms of the state of siege. Those norms seriously restricted judicial guarantees. The Statute for the defence of Justice restricted the exercise of the right to a defence by establishing that evidence could only be challenged during trial. According to the same rules the judge could order that certain evidence or judicial decisions should be kept secret until that stage. In addition, the judge could terminate the investigative phase by a decision against which there was no recourse. The measures ignored the principles of the adversary procedure, openness and the equal right of the defence and prosecution to submit evidence just as they denied in practice the right to be presumed innocent.

82. Other provisions seriously affected the right to freedom. The only accepted security measure was detention and release on bail was only possible when the detention had lasted as long as the sentence or the detainee was over 70 years of age. Furthermore, in those cases an emergency decree had restricted the exercise of the right of habeas corpus. When it was borne in mind that the investigative phase has no set time-limit, the holding of the trial could be postponed indefinitely and the accused was in prison throughout that period, remand in custody really became an advance sentence.

83. The situation was worsened by the fact that the security agencies with police powers could provide evidence without having been previously ordered to do so. Recently a decree issued under the state of internal disturbance had reinforced the tendency towards the bureaucratization or even the militarization of criminal proceedings and weakened the necessary judicial controls required by any state of law.

84. In cases when the accused were members of the police and armed forces they were judged by military courts. Frequently, those courts did not investigate the cases or exonerated the perpetrators of serious violations in the face of evidence of their guilt. It was interesting to note that cases involving torture accounted for a bare 0.05 per cent of the total number of trials initiated in military courts while the Attorney-General of the Republic's Office reported that 21 per cent of the complaints concerning torture had involved members of the military forces in 1991. In addition, the victims had no guarantees or means of bringing proof before military tribunals against members of the armed forces accused of violating human rights since the Code of Military Penal Justice did not allow victims to appear as complainants.

85. The present structure of the administration of justice and violence directed against court officials and lawyers were the main threats to the independence and impartiality of the Colombian judiciary.

86. Between June 1992 and May 1993 many lawyers, judges and other legal professionals had been threatened, ill-treated and assassinated. The report prepared by the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists contained details of 32 cases, 23 of which were directly related to the legal exercise of the profession, and the cases had produced 52 victims in all.

87. During the quarter of 1993, at least 38 judges and lawyers had been murdered or had had attempts on their lives. In 42 per cent of the murders no motivation could be identified, which seemed to indicate that it was a result of what was known as inorganic violence and in 57 per cent of the cases the murderer was not identified, which bore witness to the high levels of impunity which characterized the administration of justice.

88. Another factor which affected the independence and impartiality of the judiciary was its structure and forms of functioning. With the aim of achieving greater efficiency in the process of investigating cases, the Office of the Attorney-General of the Republic had been organized as a centralized and hierarchical administrative structure which was openly in conflict with the jurisdictional functions devolving upon it.

89. In the same way, the fact that members of the police had the power to collect evidence when hierarchically and administratively they came under the executive branch of the Government affected the impartiality and independence of the judiciary. The comprehensive use of emergency measures converted into permanent legislation and other exceptional provisions adopted under the state of internal disturbance, plea-bargaining, and rewards for informers had introduced variables into legal proceedings which, far from reducing factors of criminality, had refined them and made them worse. Impunity continued to prevail in Colombia with the exception of certain notorious cases to which the Office of the Attorney-General had assigned priority. The State's inability to punish crime was also reflected in the proceedings instituted into acts directed against judges and lawyers which had yielded very poor results.

90. Ms. DEGIAMPIETRO (International League for the Rights and Liberation of Peoples) (ILRLP)), speaking on item 10, said that she wished to draw the Sub-Commission's attention to the heinous conditions endured by Tibetan detainees and prisoners and to the numerous violations of their right to a fair trial. Most of the people concerned were political prisoners. It was futile for the Government of China to allege that no one in China was subjected to criminal penalties simply for holding dissenting political views since what the Government defined as "counter-revolutionary crimes which endanger the security of the State" included the holding of peaceful demonstrations, suspected involvement in a demonstration, merely speaking with foreigners, singing nationalist songs, putting up posters or preparing lists of casualties during crackdowns on demonstrations. None of those activities justified application of the term "counter-revolutionary crime".

91. Her organization had noted with interest the fourth report on the right to a fair trial prepared by Mr. Chernichenko and Mr. Treat (E/CN.4/Sub.2/1993/24 and Add.1 and 2). It wished, however, to highlight certain discrepancies between the recommendations contained in the report and the legal provisions relating to due process of law currently in force

in Tibet and their implementation. Firstly, detention without charge was extremely common in Tibet. Detainees could be held incommunicado for days, months or even years and there was no legal obligation to inform the detainee's family, since he had not been "officially" arrested. The Chinese Code of Criminal Procedure seemed to indirectly allow that situation; article 110 simply required the court to send the indictment to the accused seven days prior to the opening of the trial. For instance, Jampa Ngodrup had been held for 10 months without charge before being sentenced. The same fate was shared by the vast majority of the 450 Tibetans apprehended over the past 18 months, only 50 of whom were known to have been tried in a court of law. Concern had also been expressed regarding the 35 political prisoners arrested with great brutality at the end of June 1993 at Kyimshi, following a peaceful demonstration by villagers trying to prevent the local police from seizing monks from nearby monasteries. Her organization therefore supported the recommendation of the two Special Rapporteurs regarding the need for all States that had not yet done so to introduce a guarantee such as habeas corpus or amparo without delay.

92. The second major discrepancy between the Special Rapporteurs' recommendations and the current situation in Tibet concerned the question of warrants of arrest, the absence of which frustrated one of the main rights connected with a fair trial - namely, the right to adequate time in which to prepare a defence. On the rare occasions when defence was permitted, it was restricted to an appeal for mitigation of punishment. A plea of "not guilty" was not admissible. The basic safeguard of due process - the right to be presumed innocent until proven guilty - seemed not to apply to Tibetan or Chinese prisoners. The Chinese trial system required a "confession" by the defendant, and no trial was considered complete without an admission of "guilt". Thus verdicts of "guilty" for anyone who was tried were virtually certain.

93. The sentences imposed on political prisoners were often disproportionately severe in relation to the alleged offence. Jampa Ngodrup, although he had made a full confession, had been sentenced to 13 years in jail for writing out two lists of names of persons arrested during a demonstration. The court had stated that the sentence had been handed down in order to "strengthen the unity of the Motherland ... and to stabilize the democratic rights of the people". Lobsang Dorje, a 20-year-old monk, had been sentenced to nine years' imprisonment for "encouraging 20 colleagues to demonstrate".

94. However, the greatest adversity that Tibetan political prisoners had to face was the pitiless treatment to which they were subjected during their pre-trial detention. Many forms of cruel and degrading treatment and many methods of torture devised to extract a confession had been described in detail by a number of former political prisoners. Confessions were often extorted by the threat of the use of force, and in some cases the husbands or wives of detainees had been arrested for unknown reasons shortly after the "arrest" of a loved one. Despite China's recent ratification of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and despite the fact that the Chinese Constitution prohibited the use of torture, Tibetan political prisoners were still being routinely tortured. Clear evidence of that was to be found in a number of official United Nations documents and in numerous reports drawn

up by various non-governmental organizations (NGOs). Members of the Sub-Commission might also remember the statement made by Mr. Tang Bojaio before them in 1992. Also, several NGOs confirmed the withholding of medical treatment for prisoners in detention centres. More often than not, a prisoner's need of medical attention would be a consequence of ill-treatment by prison staff, and doctors were allowed to intervene only when a prisoner was close to death. Cases of people who had died very shortly after their release had been reported.

95. Given all those facts, her organization was understandably concerned about the fate of Gendun Rinchen, a tourist guide arrested in May 1993. He had been monitoring human rights and had planned to deliver a report to a visiting delegation of European diplomats. The Chinese authorities had accused him of "stealing State secrets". Concern had also been expressed for the compelling case of Damchoe Pemo, a pregnant woman arrested in very similar circumstances who had suffered a miscarriage while in detention, after police had forced her to remain standing for over 12 hours because she had refused to admit to being a political activist.

96. ILRLP urgently appealed to the Sub-Commission to give serious consideration to the situation in Tibet by appointing a Special Rapporteur on Tibet and urged the Chinese Government to allow access to the region to monitoring NGOs, to the special rapporteurs on thematic issues, including the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture, and to the Working Group on Enforced and Involuntary Disappearances.

97. Mr. Al-Khasawneh took the Chair.

98. Mrs. PALLEY, speaking on items 10 (a), (b), (d) and 11, recalled that at the Sub-Commission's previous session she had expressed concern regarding alleged threats to the independence of lawyers in Northern Ireland and departures from standard procedures in the criminal interrogation process during the emergency situation which had prevailed there for nearly 25 years, a situation which had also resulted in manifestations of terrorism and restrictive legislation in mainland Britain. She was still concerned about certain details of the procedures used to deal with the prevention and prosecution of terrorism and about the overall policy adopted by the United Kingdom and Irish Governments in seeking to bring the tragic emergency to an end.

99. Some of the points which she would make were relevant to all States facing emergencies caused by terrorism and irredentist attacks on their territorial integrity with a view to altering or abolishing borders, undoing the consequences of historical events and agreements, and establishing by violence the irredentist groups' view of the appropriate order. When such violence occurred in democratic States, even if the borders of the State concerned had originally been unjustly drawn and nationalist aspirations had been circumvented, the appropriate method of change was persuasion and the ballot box, not the bullet and the bomb. Those who used the latter methods were, nevertheless, entitled to observance of international human rights standards, but those standards were, of course, subject both to restrictions for reasons of public order or national security and to derogation to the extent strictly required by the exigencies of the situation.

100. Her first major complaint was the interpretation by government lawyers of the permissible scope of restrictions based on the need to protect national security or public order or respect for the rights of others. Governments placed on the statute book permanent laws to deal with terrorist disorders and treated those laws as being within the scope of permissible restrictions. In that respect, the Governments of the United Kingdom and India were at one. Such Governments seldom made open and honest derogations under article 4 of the International Covenant on Civil and Political Rights, since they seemed to believe that they should not publicly acknowledge the need to depart from normal procedural standards. Such an attitude was grossly misguided because, unless there was a derogation, there was no justification for different standards of protection for accused persons within one and the same State, even if the State concerned had different legal systems in different geographical regions, as in the case of the United Kingdom.

101. On the British mainland standards of protection were very high and subject to constant improvement. In Northern Ireland, however, standards were not so high because of the need to modify ordinary criminal procedure in order to make it possible to convict persons engaging in violent terrorist crimes. Sophisticated terrorists were trained to withstand interrogation and to exploit the legal process. That was why there were special provisions allowing inferences to be drawn from the fact that a prisoner undergoing police interrogation remained silent or did not disclose a fact which he later relied on for his defence. In other words, if a defendant came up with an alibi later on but had remained silent earlier, the court might draw inferences as to the truthfulness of the alibi. Suspects must, of course, be warned in advance that their failure to mention such facts could be treated as relevant evidence. Similar adverse inferences could be drawn from failure to explain the presence of explosive substances or marks on the suspect's person or clothing, or his presence at the place and time when the offence had been committed, or his silence in court. The right of silence remained, but unreasonable silence allowed adverse inferences to be drawn. That did not amount to a denial of the right of silence, nor did it make a silent accused person presumptively guilty. She therefore urged the United Kingdom Government to make a derogation to cover that departure from standards prevailing elsewhere in Britain rather than await the results of a possible application to the European Commission on Human Rights.

102. She did not share Amnesty International's concern regarding the propriety of drawing adverse inferences from unreasonable silence, a matter on which human rights advocates might honestly differ. Nor did she share Amnesty International's concern regarding the United Kingdom's derogation allowing for the extended detention, for periods of up to five days, of persons in respect of whom further inquiries and investigations were necessary to decide whether they should be prosecuted. Even denial of immediate access to a lawyer would not worry her, although it was contrary to principle 18 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. There ought, however, to be a derogation.

103. She was, however, concerned about the fact that when lawyers were allowed to interview clients, they could be required to do so in the sight and hearing of a police officer. Mr. Joinet, the Special Rapporteur, had pointed to article 45 (11) of the Northern Ireland (Emergency Provisions) Act, which in

effect implied that lawyers would collaborate with suspected terrorists. The International Commission of Jurists had also drawn attention to Principle 8 of the Basic Principles on the Role of Lawyers in that connection. Section 45 of the Act, apart from casting a grave slur on lawyers, breached the requirement of confidentiality, which only a derogation could justify.

104. The hostile attitudes adopted by some policemen towards lawyers was also a matter of grave concern. The United Kingdom Government firmly repudiated any idea of countenancing such attitudes and had decided to investigate any allegations that lawyers representing terrorist suspects were being harassed or threatened. Thus far the justification for non-investigation had been that only those who made the allegations could give the police evidence on which to act. In her opinion, that was misguided: the police were experts at investigation and should be able to investigate their own practices. It was their duty to investigate themselves. One excellent step recently taken by the United Kingdom Government had been the appointment of an independent Commissioner to the holding centres where persons were interrogated. The Commissioner presumably knew what happened and had the confidence of the police. He should be asked to investigate allegations of harassment, with a view to rooting out the practice in future and to recommending safeguards and detailed procedures which would remove any suspicion that such abuses occurred. The International Commission of Jurists had suggested an independent commission of inquiry. If the United Kingdom Government would not accept that, it should at least accept an investigation by its own Commissioner. The Commissioner should also have the right to attend interrogations and be provided with a deputy commissioner to support him. He should also investigate the murder of Mr. Patrick Finucane.

105. Since the Sub-Commission's previous session, the British Government had announced that it would electronically stamp the time of interviews on police interview notes in interrogation centres. That step, however, still did not deal with the problem of visual and auditory records. Unfortunately the draft code of practice to be prepared under section 61 of the 1991 Northern Ireland (Emergency Provisions) Act contained no reference to the duty to provide and use a television system. In one case, an alleged terrorist had won an appeal on the ground that in the short period in which the police had not been watching the monitor he had been assaulted and forced to confess under duress. Since then the police continuously watched the monitor, and there were now far fewer allegations of assault. Nevertheless, the United Kingdom Government refused to allow any permanent video-recording of interrogations, although they would protect both the suspect and the police. It still took the view that certain information should be withheld for fear of the fate that might befall an informer. That appeared to her to be applicable only in a limited number of cases and relatively too small a consideration to justify denial of a safeguard in the form of a video record.

106. Finally, she wished to make some controversial but constructive comments on how the Northern Ireland emergency could be brought to an end. For nearly a quarter of a century there had been a political vacuum in Northern Ireland, for which the British and Irish Governments shared a great deal of responsibility. Even when they had attempted to find agreed solutions, they had ignored the people of Northern Ireland. Solutions could not be imposed over the heads of the electorate, which must be given a specific opportunity

to endorse any arrangements. In her opinion, the only way to end the emergency was by taking the following steps. First, the Irish Government should announce its firm intent to repeal articles 2 and 3 of its Constitution, which laid legal claim to Northern Ireland and encouraged the IRA. The incitement to violence should be removed as soon as possible, and no excuses to the effect that first of all an overall settlement must be reached should be given. Second, the United Kingdom and Irish Governments and all local Northern Ireland political parties should agree on regional power-sharing in Northern Ireland and on cooperation between Northern Ireland and the Republic of Ireland. Any package deal should be put to the Northern Ireland electorate in a referendum. Third, preventive detention should be introduced on both sides of the border, and for that purpose, the Irish Government should use its Offences Against the State Act. In normal circumstances preventive detention was undesirable, but in the case of a totally permeable border across which terrorists flitted easily, it was essential. In any case, it must be even-handed: both IRA and so-called "Loyalist" terrorists and gangsters must all be interned. Some members might be shocked by her advocacy of preventive detention, but unless it was introduced jointly, there would be continuous violence in Northern Ireland for the next 50 years.

107. Mrs. MIRANDA BRANCO (Pax Romana) speaking on item 10, said that she was the widow of Antonio Bosco Lobato, who had fought against the occupation of East Timor by Indonesia. He had been captured in 1979 at a time when he had been seriously ill. After being tortured during interrogation, he had been barbarously murdered at Alas. Her mother-in-law, sister-in-law and two younger brothers-in-law had also been captured in 1979 and taken to Alas, where they had been shot and buried in a common grave. Another sister-in-law, Mariazinha Lobato, had also been killed by Indonesian troops. Her brother, Francisco Miranda Branco, had been arrested, at the time of the Santa Cruz massacre at Dili on 12 November 1991. He had been sentenced to 15 years' imprisonment and then deported to Jakarta with seven companions also arrested on 12 November 1991. Since then they had disappeared, and she therefore requested the Indonesian delegation to provide some information on them. Her brother's wife had been removed from her post in the civil service. That was the usual Indonesian practice in East Timor: when husbands were arrested, their wives were dismissed from any public post and all their property was confiscated. Her cousin, Adelino Corte Real, had disappeared in November 1992 when the Jakarta army had been searching towns and villages. She would like to know what had become of him. Another cousin, Acacio Tilman had been captured in November 1992, beaten and tortured.

108. Other persons that she knew had been imprisoned and maltreated, including Olandina Geiro Alves, Oscar Lima, Vitor Viegas, Odete da Silva Viegas, and Constancio Sanches. Since she still had family members in East Timor, she hoped that her statement to the Sub-Commission would not cause any problems for them. Since no investigation of the cases denounced had been initiated, Pax Romana requested the Sub-Commission to take concrete measures to guarantee that justice was done on a fair and impartial basis.

109. Mr. OZDEN (Centre Europe - Tiers Monde), speaking on items 10 and 11, said that in 1992 almost 3,000 persons had been assassinated as a result of political violence in Turkey. There had also been 12 disappearances.

110. The Turkish Human Rights Association had reported that, during the state of emergency in the Kurdish provinces, 11,300 persons had been arrested and accused of assisting or sheltering PKK activists. The Association had also reported that it had received 1,892 complaints between August and November 1992, mostly related to cases of arbitrary incommunicado detention, torture and disappearances. Between December 1992 and January 1993 a further 862 complaints had been received.

111. The reasons for the arbitrary arrests, as in past years, had included: participation in peaceful demonstrations, trade union or political activities or hunger strikes indicating solidarity with prisoners; expressions of opinion contrary to the ideology of the State; infraction of the censorship laws relating to events in Kurdistan; closure of business by way of protest against State terror or as a sign of mourning or celebration; refusal to collaborate or take up arms to fight the Kurdish resistance; attendance at the funerals of opposition Turks or Kurdish fighters or activists; wearing the Kurdish national colours, yellow, green and red; and possession of cassettes recording Kurdish songs. Eighty-five per cent of those arrested - many of whom had been tortured - had been released without any charges having been brought. A case in point was that of Harun Çetin, a student at the University of Istanbul, who had been arrested, along with his friend Özer Yüce, by the Avcilar police on 15 March 1993. The two had been taken to the Anti-Terror Bureau of the Istanbul police where they had been tortured and Harun Çetin had been beaten severely on the head. Although in a coma, he had been refused admission by several hospitals. His family had been threatened by the anti-terrorist police unit because they had approached the Istanbul Human Rights Association. The public prosecutor later confirmed that there had been no evidence against Harun Çetin. Even after his release, doctors had refused to issue a certificate attesting to the serious state of his health.

112. Since January 1993 there had been 30 hunger strikes in 19 Turkish prisons. The causes had included ill-treatment, torture, solitary confinement, blocking of defence preparations, brutal searches and confiscation of property, refusal of medical care, refusal of visits and recreation and ill-treatment during transfers between prisons.

113. In a public statement, the European Committee for the Prevention of Torture had concluded that the Turkish authorities had failed to improve conditions relating to the strengthening of legal guarantees against torture and other forms of ill-treatment by the police, gendarmerie and the anti-terrorist departments of the Ankara and Diyarbakir police.

114. Notwithstanding its many promises, the Turkish Government had taken no significant action to restore the rule of law. The amendment of 18 November 1992 to the Code of Criminal Procedure had been criticized by jurists and human rights activists on the grounds that it did nothing to alleviate the problem of torture and was unlikely to produce results until the staff accustomed to employing torture had been replaced.

115. Most of the amendments moreover were not applicable in the Kurdish regions, where a state of emergency ruled, nor in political investigations under the jurisdiction of the State security courts where both judges and prosecutors were career officers. In Turkey, participation in a demonstration and the expression of an opinion against the indivisible unity of the State were regarded as political crimes.

116. The law amending the Code of Criminal Procedure had retained the incommunicado detention period for offences under the jurisdiction of the State security courts at between 48 hours and 15 days but had provided that that period could be doubled to 30 days in the Kurdish provinces. In such cases the presence of a lawyer was not permitted. Those provisions contravened articles 5 and 6 of the European Convention on Human Rights which had been ratified by Turkey.

117. Lawyers and defenders of human rights were frequently threatened; some were arrested at regular intervals and others had been assassinated. The situation in Turkey had reached such a point that, on 8 September 1992, Cetin Ascioglu, a member of the Court of Cassation, had said that in Turkey the independence of the courts, taken in the contemporary context, had never existed because neither politicians nor judges had understood the underlying meaning of such independence.

118. Mrs. PALLEY, speaking on agenda item 10(a), said that the concept of the privatization of prisons was so startling to some people that they had failed to see what was happening in a number of States, including the United States, Australia, Canada, the United Kingdom and, more recently, New Zealand. In those countries the management and operation of entire prisons was being contracted out to international companies established by the construction and security industries which then recruited former prison officers as core staff. The Governments which had introduced privatization had been motivated by the aim of getting new prisons more quickly and cheaply and getting rid of what they saw as obstructive prison unions whose members were paid too much in expensive allowance and pensions.

119. She did not doubt that, by and large, the motives of Governments were good but quick fixes were no solution to the need to reform and to spend money on prisons and to change the attitudes of prison staff. In the long run there would be grave risks of abuse in privately run prisons which Governments would not be able to remedy because, in the meantime, their own State services would have run down and they would not be able to take over the prisons. It was not too far fetched to say that, starting with private prisons, Governments were beginning to move towards privatizing aspects of the police forces and even of the judicial system. Precedents could have dynamic implications.

120. Already in the United Kingdom, it was proposed to replace a career in the police services involving a lifetime of commitment, by giving policemen 10-year contracts. If those proposals were adopted, a policeman would no longer be a professional with a career-long commitment but would be given a short-term job opportunity which would attract ex-soldiers, former security guards, people temporarily laid off by the commercial sector, right-wing authoritarians and adventurers. The impact of such short police contracts on the administration of justice would be disastrous. The United Kingdom police of course objected strongly to such plans.

121. The advantages of prison privatization were self-evident. There were five main policy arguments against privatization, namely: the discipline of prisoners and the possible prolongation of their imprisonment was a matter which was clearly a State responsibility as also was the use of force to restrain. The State must also be liable for violations against prisoners and their human rights; it must remain accountable and visible in its actions vis-à-vis prisoners and it must remain the only entity with power to use

coercion in the administration of justice. Only the State had legitimacy in the eyes of the public to implement those responsibilities.

122. Grave risks were also involved in having prisoners work for private firms. Convict labour and peonage had a terrible history. If prisoners were to be compelled to work for private firms, that would represent a contravention of the ILO Forced Labour Convention (No. 29). There must be proper safeguards including safety standards at work, accident insurance, compensation, health care and adequate wages. Prisoners were not in prison to become slaves which they would certainly become if they were not paid reasonable wages. The dangers inherent in prison privatization were set out in detail in document E/CN.4/Sub.2/1993/21.

123. In that connection, she would hate to imagine the conditions which would be introduced in the prisons of certain countries where bribes from the construction and security industries would encourage corrupt politicians to hand over prisoners to such corporations. Inspectors whose duty was to maintain standards would be bribed. It was heartwarming however to observe that not a single third world country was giving serious consideration to prison privatization.

124. Only five years earlier, the responsible United Kingdom minister had denounced prison privatization. Thereafter, certain Members of Parliament having financial interests with the security and construction industries had persuaded the Government to rethink the matter.

125. What was now required was that basic questions should be studied by individuals with specialist legal expertise in the fields of criminology and penology. When States held persons in custody, that action represented an invasion of the human rights of those individuals. How far could a State contract out the right to such infringement of human rights? It was her view that an expert from the International Law Commission might examine the issue and that such an examination should be carried out quickly before the cancer of privatization spread further.

126. Some States had already contracted out a number of prisons and were preparing to privatize more; some had devised safeguards, in particular the United States through the activities of civil rights groups. In the United Kingdom and Australia safeguard aspects were under consideration. It would be necessary, however, for expert criminologists and penologists to study the issue of safeguards when third parties were allowed to handle prisoners. In that connection the way forward would be for the Economic and Social Council to refer the issue to the next United Nations Congress on the Prevention of Crime and the Treatment of Offenders. In the meantime a working group of criminological experts should be asked to advise on methods of strengthening the Standard Minimum Rules for the Treatment of Prisoners. Rule 46.3 already provided that institutional personnel must be appointed on a full-time basis and have civil service status and security of tenure. More detail however was required in relation to such issues as management, contract monitoring by the State, accountability to the State, discipline, the use of force, the issue of work by prisoners and safety.

127. The question of liability for the safety of prisoners and, in particular, responsibility for protection against attacks by fellow prisoners was of major importance because it represented a widespread problem. Conditions would be

worse if prisons were privatized. Private employers would not wish guards to become involved and would therefore discourage intervention to protect prisoners against attacks from fellow prisoners. Illustrative of the danger of such attacks was a report that, in France, 50 per cent of young offenders were assaulted on their first night in prison.

128. The purpose of imprisonment was reformative and rehabilitative. The protection of the human rights of prisoners was therefore essential. Private corporations would undoubtedly cut corners in that respect and their conduct would be inconsistent with basic human rights standards. Expert advice was very necessary for the development of additional standards where privatization was contemplated.

129. Mr. SEZGIN (Observer for Turkey) said that, notwithstanding the earlier statement by his delegation, one non-governmental organization had referred to a so-called Kurdistan while another had spoken of Kurdish provinces. He wished to repeat that as the Sub-Commission was a United Nations organ, speakers in the Sub-Commission must comply with United Nations rules relating to the designation of geographical localities situated on the territory of member States. According to the United Nations units responsible for geographical names, States themselves had the responsibility of designating the names of their regions or localities. He wished to say that there was no such region as Kurdistan in Turkey.

130. His delegation had also found it intriguing that the non-governmental organization concerned had not mentioned the word terrorism even once. That was one way of giving support to terrorism. The international community discussed a number of States which encouraged and supported terrorism. It was equally true that there were non-governmental organizations which supported terrorism, under the pretext of the protection of human rights. There had been an example that very morning.

131. He would like to invite the attention of the Sub-Commission to the fact that non-governmental organizations which supported terrorism were not permitted to participate in the work of the Conference on Security and Cooperation in Europe. He could not understand why such non-governmental organizations should be allowed to continue to pursue activities which were prejudicial to human rights and fundamental freedoms within the United Nations system.

132. He could not help wondering where the so-called Kurdistan was located: was it Istanbul, where there were more Turkish citizens of Kurdish origin than in the entire region of south-eastern Anatolia?

133. Those non-governmental organizations had made completely unfounded allegations regarding certain lawyers, who defended the freedom of expression of the Kurds and had also referred to so-called journalists and human rights activists who concentrated mainly on terrorism. They had also referred to arbitrary executions. It must not however be forgotten that in a number of countries which had been spared terrorism, the assassins of presidents and prime ministers had not been identified in spite of enormous efforts by the security services, in some cases for as long as forty years.

134. In conclusion, he invited the attention of the non-governmental organizations concerned to the atrocities committed by the PKK terrorist group of drug traffickers whose thousands of victims among the civilian population included Turkish citizens of Kurdish origin. Bearing in mind the links of those organizations with terrorism, he was sure that they would not accept his invitation.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1993/2-4; 6-9; 10 and Corr.1-2; E/CN.4/Sub.2/1993/NGO/1; A/CONF.157/23)

135. Mr. ARTUCIO (International Commission of Jurists) said that the Sub-Commission had recognized the importance of the question of the impunity enjoyed by many persons guilty of grave human rights violations by mandating Mr. Joinet and Mr. Guissé to look into the issue and compile a report (E/CN.4/Sub.2/1993/6).

136. The ICJ had been concerned with the question of the impunity of perpetrators of human rights violations. For that reason, and with a view to sharing its opinions with the French National Consultative Commission on Human Rights, an international meeting of experts on impunity had been held at the Palais des Nations in November 1992. Experts from different disciplines and continents had gathered together to discuss the question, compare theories and experiences and find ways to fight against the phenomenon. The meeting had also enjoyed the active participation of 28 representatives from NGOs and 38 diplomatic representatives of States accredited to the United Nations.

137. Impunity with all its ethical, juridical and political aspects, stood in the way of democracy, represented a breakdown in the rule of law and, unintentionally, provided encouragement to future violations. It affected not only the victims of human rights crimes and their families, but also had a negative effect on society as a whole and made it more difficult to preserve "collective memory" which was so important in peoples' lives. Impunity had opened the way for the worst forms of conduct and hence the most horrendous crimes. Impunity undermined and weakened justice, affected the equality of persons before the law and cancelled out the power of dissuasion of penal law.

138. Impunity was almost always a hallmark of authoritarian and non-democratic regimes, although unfortunately it also existed in democratic systems. It could also be found in various regions of the world.

139. The report (E/CN.4/Sub.2/1993/6) analysed de facto impunity, in terms of a breakdown in the functioning of State legal and police services, and in terms of the legislative or administrative system, which granted impunity through amnesties, pardons, reprieves or other such methods. However, with respect, it seemed that the report had failed fully to consider the restrictions placed by international law on governments' freedom to grant amnesties or to use similar measures with regard to persons in their employment or officials, at least without having met specific minimum conditions.

140. On the other hand, the report quite rightly emphasized the urgent need to combat impunity with all available legal and political means.

141. The ICJ believed that in the area of jurisdiction, the front line in the struggle against impunity should be situated at the national level, namely in the national courts. However, in their work, they should also be assisted by mechanisms at the international level. To that end, there should be universal jurisdiction, which would also be the responsibility of national courts, and the establishment of an international criminal court or tribunal. Experience throughout the world showed that the trial of particularly despicable violations of human rights could not and should not be left solely to the national courts of a State on whose territory such actions had taken place, but that the guilty party should be prosecuted wherever he might be. In situations where national courts were not in a position to carry out their functions fully, whether for reasons of corruption, threats, attacks or a lack of independence, the establishment of an international criminal court was the most appropriate solution. Such a court, which ought to be a permanent institution, would be responsible for trying acts which constituted crimes against international law and other crimes against human rights with which national courts were not in a position to deal.

142. The ICJ did not share the pessimistic view expressed in paragraph 75 of the report (E/CN.4/Sub.2/1993/6) with regard to the likelihood of a permanent court of that nature being set up. It should be remembered that other international instruments had met with the same pessimism, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which had become a reality to which many States had acceded and ratified. For various reasons, the ICJ would not be in favour of ad hoc courts set up to deal with a specific situation.

143. A number of paragraphs in the Vienna Declaration and Plan of Action had referred, either explicitly or implicitly, to the aberrant phenomenon of impunity. A further paragraph had encouraged the continuation of the work of the International Law Commission with a view to establishing an international criminal court. Paragraph 91 of chapter II, section E of the document supported the efforts of the Commission on Human Rights and the Sub-Commission to examine all aspects of the issue.

144. The ICJ was confident that there was a general awareness of the need to confront the issue of the impunity of perpetrators of human rights violations in order to halt the gangrene which was setting in in societies throughout the world.

145. Ms. KIL CHA (Liberation), speaking on agenda item 4, said that Liberation and Kyosei-renko Chosadan (the Fact-Finding Team on the Truth about Forced Korean Labourers) welcomed and supported the final report which had been submitted by Mr. van Boven on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8). The conclusion and recommendations included in paragraphs 131-136 and the proposed basic principles and guidelines (para. 137) of the report were particularly helpful in establishing the right of the victims of gross violations of human rights.

146. The Sub-Commission at its current session had heard many statements by experts, NGOs and Governments concerning the situation of persons subjected to sexual slavery and forced labour during World War II, and which required a

particularly effective response on the part of the United Nations. It was important to note that two areas of violations of international law required reparations to be paid. The first was a case where the offending State carried responsibility for its conduct vis-à-vis the injured State at the inter-State level (para. 42 of the report). The second case was when a State breached an obligation erga omnes, it injured the international legal and public order as a whole and consequently every State had both a right and an interest to bring an action against the offending State (para. 44).

147. With regard to the sexual slavery, inter-State talks were under way between the Democratic People's Republic of Korea and Japan. With regard to forced labour in particular, demands for reparation from individual victims were being made against Japan on the grounds of gross violations of human rights. Japan should shoulder its responsibility in both cases. The final report helped to clarify in particular the latter case.

148. The Japanese Imperial Forces and Government had enslaved about 200,000 Asian, mostly Korean "comfort women" and about 6 million Korean men and women had been forced labourers during the wartime period. Many NGOs had insisted that such actions constituted war crimes and crimes against humanity as well as violations of international treaties to which Japan was a party. The first of the proposed general principles stated that under international law the violation of any human right gave rise to a right of reparation for the victim. Particular attention needed to be paid to gross violations of human rights and fundamental freedoms which included: slavery and slavery-like practices; torture and cruel, inhuman or degrading treatment or punishment; arbitrary and prolonged detention; deportation or forcible transfer of population; and systematic discrimination, in particular based on race or gender. If one applied the proposed general principles to the situation of those cases, the right to reparation of the victims was clearly established.

149. Proposal 6 stated that reparation might be claimed by the direct victims, and, where appropriate, the immediate family, dependents or other persons having a special relationship to the victims. The Government of Japan had not however, admitted any legal responsibility for reparations for victims, claiming that litigation was under way before the Tokyo District Court.

150. Furthermore, the second proposed general principles stated that every State had a duty to make reparations in case of a breach of the obligation under international law to respect and to ensure respect for human rights and fundamental freedoms. The obligation to ensure respect of human rights included the duty to prevent violations, the duty to investigate violations, to take appropriate action against the violators and to afford remedies to the victims. States should ensure that no person who might be responsible for gross violations of human rights should have immunity from liability for their actions.

151. Despite its obligation to punish the perpetrators of such international crimes, Japan had never tried to prevent the crimes nor investigated them, claiming that such practices did not constitute a crime against humanity. Thus, Japan had never punished a single culprit. For those reasons, Japan was duty-bound to provide reparation for the victims.

152. It seemed that the deep-rooted cause of such an attitude of denial of State responsibility by Japan lay in the absence in a feeling of guilt with

regard to its aggression against the Asian nations. She wished to draw the attention of the Sub-Commission to the fact that Japan had denied the enslavement of the Korean people as a result of deprivation of sovereignty by coercion against the then King of Korea and his ministers in concluding the 1905 "Protectorate Treaty", although the International Law Commission had taken the view in its 1963 report that the treaty had been one of the four major examples where the agreement did not take any effect.

153. Fortunately, after almost half a century, the new Prime Minister of Japan Mr. Hosokawa had recently expressed the view that the past wars waged by Imperial Japan had been "aggressive".

154. Her organization requested the Sub-Commission and the Commission on Human Rights to: investigate the facts and legal responsibilities with regard to the situation of "comfort women" and forced labourers during the war, including the fundamental causes such as the 1905 treaty, and take any appropriate action to ensure effective remedies for the victims; furthermore, considering that the enslavement of the Korean "comfort women" and forced labourers constituted serious international crimes, to ensure punishment of the perpetrators of such crimes and establish an arbitration body which could provide reparation for individual victims; moreover, to endorse the final report of the Special Rapporteur and call on the Economic and Social Council and the General Assembly to adopt the proposed basic principles and guidelines as soon as possible.

The meeting rose at 1.15 p.m.